(1)

Supreme Court, U.S.
FILED

031385 JAN 30 2004

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

DOLORES HOLGUIN — PETITIONER, pro-se.

vs.

GREENLEE COUNTY FLOOD CONTROL DISTRICT,
et. al. — RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES
COURT OF APPEALS 9th CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DOLORES HOLGUIN

H.C.R. BOX 191

DUNCAN, ARIZONA 85534

928-359-2302

QUESTIONS PRESENTED

The United States Congress, under the Senate Energy and WaterDevelopment Appropriations Bill of July 22, 1992 and the Arizona House Bill 2098, allocated funds of $10,822,675 for the relocation of 86 household displacees of the October 3, 1983, San Francisco River flood disaster.

Relocation assistance under the Stafford Act PL93288 et. seq., and PL91646, Part 24, et. seq., Part 24.404(c)(l)(iii) and (vi), Replacement Housing of Last Resort, and Part 24.2(d), comparable conventional housing was denied to the Petitioner. Petitioner was processed in comdemnation proceedings (District Court Order, pg. 5) as a project displacee and obligated under duress to accept a mobile home, which is not a conventional home under 24.404(c)(l)(iii) and (vi) (Court Order, pg. 5).

United States Court of Appeals 9th Circuit affirmed the District Court's decision on standing, sovereign immunity and F.R.Civ.P.12(b)(6) and entering a decision in conflict with the decision of another United States Court of Appeals, 9th Circuit (cite 149 F. 3d 997, (1998) on the same important matter.

LIST OF PARTIES

DOLORES HOLGUIN

PETITIONER, pro-se,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA;

ARIZONA DEPARTMENT OF EMERGENCY AFFAIRS, DIVISION OF EMERGENCY MANAGEMENT, AN ENTITY OF THE STATE OF ARIZONA;

DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS FOR THE STATE OF ARIZONA, AN ENTITY OF THE STATE OF ARIZONA;

ACQUISITION SCIENCE L.T.D., AN ARIZONA CORPORATION;

FEDERAL EMERGENCY MANAGEMENT AGENCY,

RESPONDENTS

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United States Court of Appeals for the Ninth Circuit
Appeal from the United States District Court
Case No. 02-17415 / D.C. No. CV-01-00482-FRZ
Date of entry: July 29, 2003

APPENDIX B

United States District Court for the District of Arizona
Declaratory Judgement and Injunctive Relief
Case No. CV 01-482 TUC FRZ
Date of entry: September 30, 2002

APPENDIX C

United States Court of Appeals for the Ninth Circuit
Petition for Panel Rehearing
Case No. 02-17415 / D.C. No. CV-01-00482-FRZ
Date of entry: November 06, 2003

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States court of appeals decided my case was July 29, 2003.

[X] A timely petition for rehearing was denied by the United States court of appeals on the following date: November 6, 2003, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93288).

§ 5143. Coordinating officers

(a) Appointment of Federal coordinating officer

Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(c) State coordinating officer

When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinator officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

§ 5174. Temporary housing assistance

(a) Provision of temporary housing

(1) In general

The President may —

(A) provide, by purchase or lease, temporary housing (including unoccupied habitable dwellings), suitable rental housing, mobile homes, or other readily fabricated dwellings to persons who as a result of a major disaster, require temporary housing;

(3) Period

Federal financial and operational assistance under this

section shall continue for not longer than 18 months after the date of the major disaster declaration by the President, unless the President determines that due to extraordinary circumstances it would be in the public interest to extend such 18-month period.

(4) Federal share

The Federal share of assistance under this section shall be 100%;

§ 5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

§ 5189b. Date of eligibility; expenses incurred before date of disaster

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Pub. L 91-6146, 84 Stat. 1894 (42 U.S.C. 4601); as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-251 (42 U.S.C. 4601 note): and 49CFR 1.48(cc).

Sec. 24.2 Definitions

(d) Comparable replacement dwelling. The term comparable replacement dwelling means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used.

However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.

Sec. 24.204

(b) Circumstances permitting waiver. The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demon

strated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(c) Basic conditions of emergency move. Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

Sec. 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) Eligibility. A displaced person is eligible for a replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacment dwelling for not less than 180 days immediately prior to the initiation of negotiation:

Sec. 24.404 Replacement housing of last resort.

(b) Basic rights of persons to be displaced. Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the

Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) Methods of providing comparable replacement housing. Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in s 24.401 or s 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

STATEMENT OF THE CASE

The Petitioner Plaintiff, an approved applicant for disaster relief under the Stafford Act, PL93288 et.seq., brought suit for the compliance of PL91646 that mandates the subject matter of flood disaster relocation for housing of last resort Part 24.404 (c) (l) (iii) (vi), the construction of a new replacement dwelling and the purchase of land by the displacing agency and subsequent exchange with a displaced person to a comparable replacement dwelling under 24.2 (d).

The Petitioner lived in a conventional home in the October 3, 1983, flood disaster. Relocation funds of $10,822,675 were allocated by the United States Congress under the Senate Energy and Water Appropriations Bill, and the Arizona House Bill 2098 for 86 households flood disaster displacees exclusively.

The District Court ruled that Plaintiff, as a private citizen, does not have standing to challenge the actions of agencies generally under the Acts. (District Court Order, pg. 7.)

The District Court order finds that the Plaintiff's claims are precluded under applicable provisions of A.R.S. § 12-821. (District Court Order, pg. 14.)

The Federal Court of Appeals memorandum states,

> Dolores Holguin appeals pro-se the district court's judgement dismissing with prejudice his actions challenging the compensation he received as relocation benefits from the Clifton Flood Control Project when his mobile home was damaged in a 1983 flood." (Memorandum, pg. **2**.)

Defendant ADEM, an employee of FEMA under PL93288, sec. 5143 on this flood disaster, was a participant in an intergovernmental agreement with Greenlee County Flood

Control District to build a 3000 foot long levee for flood control in the south part of Clifton. Under A.R.S. 48-2605 (a), the District lacked jurisdiction north of the Greenlee County Flood Control District boundaries on the private property of the 86 households flood disaster displacees, whereupon the relocation allocated Congressional funds are not benefits from the Clifton Flood Control Project.

Petitioner qualified for relocation assistance under Sec. 5181, and eligibility for Federal assistance to begin on the date of the event, Sec. 5189(b) of the Robert T. Stafford Disaster and Relief and Emergency Assistance Act, PL93288, and Real Property Acquisition Policy Act of 1970, PL91646, Part 24.204 (c), for relocation payment.

In conflict with another U.S. Court of Appeals 9th Circuit (before: D.W. Nelson, Boochever, and Reinhardt, circuit judges), Reinhardt, circuit judge:

> At the same time, we conclude that applicants whose applications had been approved have standing to file suit under § 10(a) of the Administrative Procedures Act. We also hold that these individuals' claims are not subject to dismissal under Fed.R.Civ. P. 12(b)(6) on grounds of sovereign immunity. (149 F. 3d 997, 1000.)
>
> On appeal, the Plaintiffs assert that the District Court erred because the A.P.A. unequivocally waives sovereign immunity with respect to their claims for injunction and declaratory relief. We conclude that the District Court erred in granting the Defendants12(b)(6) motion on the basis of agency discretion. (149 F.3d 997, 1004.)
>
> N7. Because the Plaintiff's claims fall within the underlying statute's zone of interest, they need not also demonstrate that they seek to vindicate their own legal rights under the underlying statute at issue. They are asserting their own legal rights under the A.P.A. (See

Catholic Social Services v. Shalala 12F.3d 1123, 1126 (DC Cir. 1994), (holding that once the Plaintiff suing under §10(a) of the A.P.A. satisfy its zone of interest, they "need not satisfy the third party interest standard."); *Rogers v Brockette*, 558 F. 2d 1057, 1061 & n.8 (5th Cir. 1979) (same).

Even if states that receive disaster assistance are also within the Acts' zone of interest, the Acts' real beneficiaries, the individuals *1005 and families who suffer losses due to natural disasters, fall well within the Acts' general policy concerns.

N8. A.P.A. § 702 reads in relevant part: A person suffering wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority *shall not be dismissed nor relief therein be denied on the grounds that it is against the United States*, or that the United States is an indispensable party.
5.U.S.C. § 702 (emphasis added). It is worth adding that the Plaintiff's request for an injunction that would require FEMA to pay its share of funds is not considered a claim for "money damages" and therefore, is not barred by sovereign immunity. See *Bowen v. Massachusetts* 487 U.S. 879, 108 S.Ct.2722, 101 L.Ed. 2d.749 (1988) (holding that suits seeking actual funds owed to claimants are suits for "injunctive" relief under A.P.A. §702); *Blue Fox Inc.*

v. Small Business Administration 121 F.3d 1357, 1361 (9th Cir. 1997) (same). 149 F. 3d 997, 1005 N8.

While we think it plain that under the Stafford Act, just as under the more well known Federal Torts Act (see 28 U.S.C. § 2680 (a)) "decisions involving the allocation and deployment of limited governmental resources are the type of administrative judgement that the discretionary function exception was designed to immunize from suit." *Fang v. United States* 140 F.3d 1238, 1241-42 (9th Cir. 1998), the exception will not apply when a federal statute, regulation or policy specifically prescribes a course of action for an employee to follow." *Berkovitz v. United States*, 486 U.S. 531, 536, 108 S.Ct. 1954, 100 L.Ed. 531 (1988). In that event, the employee and the agency have "no rightful option but to adhere to the directive." 1d.

REASONS FOR GRANTING THE PETITION

Petitioner's family was displaced by a flood disaster in 1983. Petitioner cleaned the home dwelling, basement and two-car garage. Contractors' repair estimates were obtained for pre-flood home condition January 10, 1984.

Agency ADEM (Arizona Department of Emergency Management) ordered flood displacees not to repair nor re-occupy their flooded homes, that relocation to a new housing development would take place.

Agency FEMA, through the federal coordinating officers of PL93288, Sec. 5143 (a) (c), acknowledged ADEM's actions and withdrew temporary housing of Sec. 5174 on the 12th month of the 18 months allowed.

The State of Arizona did not allocate funds for displacee relocation and did not mandate ADEM to relocate displacees. The 86 disaster displacees households became homeless, as their homes were further destroyed by looters and vandals.

In January, 1993, a flood levee was proposed on the Army Corps of Engineers' "Record of Decision" for the south Clifton section of the Town of Clifton. ADEM hired an attorney that drafted resolution FCD 94-01 in February, 1994, and an intergovernmental agreement to build the south Clifton levee, which was completed in 1996.

On September 3, 1997, the displacees were advised there were no funds for relocation, but expected federal funds in 4 to 6 weeks. In May, 1998, the flood displacee petitioner was offered a $62,060 mobile home as relocation entitlement by Acquisition Science LTD., the relocation corporation obtained by ADEM, for the task of project relocation process of Part 24.401.

Part 24.401 is for 180-day home owner displacees. Petitioner declined this mobile home offer as unacceptable and presented

agency ADEM a contractor's estimate for a concrete foundation, conventional 3-bedroom, basement, and 2-car garage home, specified under Part 24.2(d) comparable replacement dwelling, at a contractor's value of $137,000, plus the value of the property for the replacement dwelling.

The congressional allocated funds exclusively for flood disaster displacees were afforded in 1992, before the conception of the levee project, designed in 1994, and thereafter named the Clifton Flood Control Project. This was ADEM's conversion of flood disaster status to project displacee status for relocation purpose under 24.401. This was called the relocation benefits from the Clifton Flood Control Project on the Federal Court of Appeals Memorandum, pg. 2.

The Petitioner was presented a September 15, 2000, deadline to accept this $62,060 mobile home or lose all congressional allocated funds for his comparable conventional dwelling.

The lower courts have been presented by the Defendants a false relocation process for flood disaster displacees, which includes appraisals of property and the process of imminent domain through state court jurisdiction concerning federal law matter.

Future disaster events must be dealt timely in compliance of federal law, and diligently, with dignity.

CONCLUSION

The petition for a writ of certiorari shoud be granted.

Respectfully submitted,

DOLORES HOLGUIN

Date: March 26, 2004